

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SMART INSURANCE COMPANY,

Plaintiff,

v.

BENECARD SERVICES, INC.,

Defendant.

Case No. 1:15-cv-04384-KBF

**DECLARATION OF B. JOHN
PENDLETON, JR. IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S DAUBERT MOTION TO
EXCLUDE PORTIONS OF THE
TESTIMONY AND REPORT OF SUSAN
HAYES**

B. JOHN PENDLETON, JR., under penalty of perjury, hereby declares as follows:

I am an attorney-at-law admitted in the United States District Court for the Southern District of New York and a member of the law firm of DLA Piper LLP (US). I am familiar with the facts and circumstances stated herein and respectfully submit this declaration in support of defendant Benecard Services, Inc.'s opposition to plaintiff's Daubert motion to exclude portions of the testimony and report of Susan Hayes.

1. Attached hereto as Exhibit 1 is a true and correct copy of the Amended and Restated Pharmacy Benefit Management & Administrative Services Agreement dated March 19, 2012.

2. Attached hereto as Exhibit 2 is a true and correct copy of referenced portions of the deposition of Kevin Hayes, dated May 19, 2016.

3. Attached hereto as Exhibit 3 is a true and correct copy of the Expert Report of Susan Hayes, dated April 19, 2016.

4. Attached hereto as Exhibit 4 is a true and correct copy of referenced portions of the deposition of Susan Hayes, dated July 6, 2016.

5. Attached hereto as Exhibit 5 is a true and correct copy of referenced portions of the deposition of Jeff Kang, dated March 31, 2016.

6. Attached hereto as Exhibit 6 is a true and correct copy of CMS's Final Audit Report, dated February 20, 2014.

7. Attached hereto as Exhibit 7 is a true and correct copy of the Expert Report of Erin Costell, dated April 18, 2016.

8. Attached hereto as Exhibit 8 is a true and correct copy of referenced portions of the deposition of Gerard Mulcahy, dated June 29, 2016.

9. Attached hereto as Exhibit 9 is a true and correct copy of the Expert Report of Susan Hayes, dated May 25, 2016.

Pursuant to 28 U.S.C. § 1786, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DLA PIPER LLP (US)

s/ B. John Pendleton, Jr.

B. John Pendleton, Jr.

DLA Piper LLP (US)

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Attorneys for Defendant

Dated: August 30, 2016